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PHONORECORDS IV

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In re Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)	Docket No. 21-CRB-0001-PR (2023–2027)

AMENDED WRITTEN DIRECT STATEMENT AND TESTIMONY OF GEORGE D. JOHNSON (GEO) a Pro Se PARTICIPANT

Volume 1

Introductory Materials

Including George Johnson's Amended Written Direct Statement, Amended Proposed Rates and Terms, and Amended Testimony.

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Friday, March 11, 2022

Table of Contents for the
Amended Written Direct Statement and Testimony of
George D. Johnson, a *pro se* Participant
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A. INTRODUCTORY MEMORANDUM TO THE AMENDED WRITTEN DIRECT STATEMENT OF GEORGE D. JOHNSON ("GEO")

Participant George Johnson ("GEO"), an individual American citizen and *pro se* Appellant songwriter[1], respectfully submits his Amended Written Direct Statement ("AWDS") and Testimony to the Copyright Royalty Judges ("CRJ" or "Panel") in accordance with 37 C.F.R. § 351.4[2].

GEO is also an independent music publisher, sound recording copyright creator, singer, author, animation creator, writer, and non-attorney without pay.

This memorandum describes the contents of GEO's Amended Written Direct Statement and briefly summarizes the Amended Testimony of my only witness, myself. Therefore, GEO respectfully requests that Your Honors consider this entire

[1] "subject to" the 1909 compulsory licenses at issue in this proceeding under §115 and (grandfathered into) 37 C.F.R. §385 overall, including Subparts B, C, (D) and the newly named, "Subpart B configurations". *See* 2016-09-29, *Order Denying Services' Motion to Dismiss George D Johnson*, *SDARS III* https://app.crb.gov/document/download/3715

[2] https://www.ecfr.gov/current/title-37/chapter-III/subchapter-B/part-351#351.4, 37 C.F.R. § 351.4

AWDS as GEO's Testimony and Proposal, and vice-versa, since I argue my AWDS Proposal in both documents.

GEO has no RESTRICTED version and only this PUBLIC VERSION.

CONTENTS OF GEO'S WRITTEN DIRECT STATEMENT

Volume 1 contains (A) this introductory memorandum; (B) GEO's proposed I.) rates II.) terms and III.) other issues; (C) an index of GEO's witnesses; (D) an index of GEO's exhibits; (E) a declaration regarding GEO's testimony; (F) a certificate of service (G) the written direct testimony of GEO as an expert witnesses and fact witnesses;

Volume 2 contains GEO's exhibits;

Volume 3 contains GEO's designated testimony from prior proceedings.

INTRODUCTION — SONGWRITER SURVIVAL RATE

During our recent March 7, 2022 Zoom hearing in the *Phonorecords III* (remand), Judge Strickler brought up a new term proposed by the Services in one of their recent filings called the "**survival rate**".

However, this term only applies to the billion-dollar/monopoly Services, but could the term "survival rate" also apply to American songwriters?

When I heard the term, I asked myself the exact same question and more.

1. What is the actual *survival rate* for an American songwriter?

2. How much does it cost for an individual American songwriter to survive under a government compulsory license, with no sales, price-fixed at about $.00012 cents per-stream, with frozen rates and rampant inflation at 7.9% over last year?

3. What is the *survival rate in a CRB proceeding* for the average, ordinary, American songwriter to survive in today's marketplace, and really the next 5 years?

4. Will the CRB also determine a *survival rate* for individual American songwriters in this proceeding since the practical reality of $.000 per-stream with no sales *has been proven to be unsurvivable i.e.* Music Row songwriters going from 4000 publishing deals to less than 400, from 2001 to the present. (NMPA evidence)

So, the answer to "what is a songwriter's survival rate?" is "Not very good."

And while I realize that is not what *survival rate* means in the context of this CRB proceeding, going from *4000 to 400 songwriters* the past 20 years **is because there was no *survival (royalty) rate*** for songwriters and this 90% drop is **real evidence** presented by NMPA in *Phonorecords III*, as did GEO, *that I witnessed*.

I pray Your Honors set a Subpart C streaming royalty rate that is also a "**songwriter survival rate**", that is *actually reasonable to individual American songwriters*, not just the Services, our self-interested lobbyists, or 3 foreign corporations.

The proposals GEO has been making in 4 rate proceedings and 2 appeals are all to simply find a rate where American songwriters can *survive*. That's it.

I've tried to work within the confines of the CRB code, also "cabined" by copyright law and alleged "rate court precedent", but much of it was *created* by the Services, self-interested lobbyists, and 3 vertically-integrated foreign corporations.

During that hearing Judge Strickler also spoke about "misery" and "burden" related to rates paid by the Services, but I also pray Your Honors will weigh the real-life misery and burden **all** American songwriters have *suffered* under a $.000 rate structure, with no sales.

The practical reality of setting songwriter rates at $.000 the past 15 years has been literally unsurvivable for Nashville songwriters — which I can personally attest to since I lived and worked on the Row for 25 years.

I testify that for over 25 years I have watched Music Row be destroyed first hand, a*ll because of compulsory $.000 streaming rates which cannibalized the 9.1 sales of thousands of the greatest songwriters that ever lived*, as well as several generations of new, upcoming talent!

$.000 rates have literally put 90% of an entire industry and an entire class of American citizens out of business — songwriters.

Add a pandemic, 2 years of economic lockdown, 7.9% inflation, and gas prices TRIPLING the past 2 years, and now the cost of living is all we're living for.

$.000 songwriter rates forever, with no sales, is the very definition of *misery* for American songwriters and this $.000 rate structure has proven to be *unsurvivable* and an *unbearable burden* on some of the greatest songwriters of all times. Songwriters who were forced to quit because of the Services demands, huge lobbyist salaries, and foreign anti-trust meddling in American copyright law.

As David Crosby just said, ***"streamers stole my record money"*** and that is 100% factually correct!

This is the problem for all American songwriters and it must be fixed.

$.000 rates forever, with no sales, is not a *survival rate* for songwriters.

I can also testify that there is certainly no more "*incentive*" to write songs at $.000, with no sales — but with no money for experts or Nobel economists, I can't afford to prove that in court, **despite it being clearly self-evident.**

There is 20 years of evidence proving streaming destroyed the American songwriter's income and profits because of the compulsory license but also because of substitution and cannibalization way *below our actual songwriter survival rate.*

To that point, since I understand that **Section 115 now requires that the Judges consider whether interactive streaming "substitute[s] for . . . the sales of phonorecords or otherwise . . . interfere[s] with . . . the musical work copyright owner's other streams of revenue[,]" under 17 U.S.C. § 115(c)(1)(F)(i),** we pray Your Honors *can now properly weigh how substitution and*

the cannibalization of sales by the streaming access model have destroyed the American songwriting industry, income, profits, and creative output.

Cannibalization is against the law in real life for a good reason, and that's why it's also a bad idea in the music industry. Cannibalization of sales by streaming has been allowed for way too long and must be stopped immediately.

Lastly, the way the "voluntary settlement" was handled by NMPA, NSAI and RIAA, all claiming that despite me statutorily objecting to their settlement as a Participant, that my participation and proper objections should both be ignored.

To me and many others, this is *pure fraud* by NMPA, NSAI and RIAA, and I am *so glad to see that Your Honors have held off on any settlement,* and not letting it be automatically approved. *We pray this settlement will be rejected for all.*

B. BRIEF STATEMENT OF GEO'S PROPOSED RATES AND TERMS

GEO proposes the following reasonable royalty rates and terms for the making and distribution of *physical* and *digital phonorecords* under the compulsory license provided in 17 U.S.C. §115, 37 C.F.R. §385.10 Subpart B (old Subpart A) [3], and "Subpart B Configurations"[4], for the period January 1, 2023 through December 31, 2027.

GEO then proposes the following reasonable royalty rates and terms for *streaming royalties* under Subpart C[5], pursuant to 37 C.F.R. § 385.20 thru .22, for the period January 1, 2023 through December 31, 2027.

As the *only* songwriter participating in these proceedings and the *only American Participant* literally "subject to" these rates and terms, GEO respectfully proposes the following sets of reasonable rates and terms for §115 musical works.

GEO apologizes for using the old code sections in my original Written Direct Statement submitted October 13, 2021, *et al.*, and confusing the Subparts. I had not realized they were changed by NMPA in the Music Modernization Act ("MMA").

To a non-attorney, and one who was comfortable with the Subparts as they were, it is confusing and I'm still not sure why the Subparts needed to be re-arranged in the MMA by NMPA and NSAI. For the record, NMPA *re-using* the term "mechanical" for Subpart C *streaming* is so confusing *after 110 years of use.*

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[3] the old Subpart A–Physical Phonorecords Deliveries, Permanent Digital Downloads and Ringtones, 37 C.F.R. §§ 385.1 to 385.10., now called the "Subpart B Configurations" from § 385.10 to 385.20.

[4] "Regulations of General Application." See 37 CFR § 385 (2018) and 37 CFR § 385 (2019).

[5] the old Subpart B–Interactive Streaming and Limited Downloads, 37 C.F.R. §§ 385.10-385.17, *et al.*

PER-PLAY OR PERCENTAGE OF REVENUE MODEL FOR SUBPART C?

In the Final Determinations for *Web IV* and now *Web V*, the CRB ruled that all rates would be based on a *per-play royalty* rate model ("PPR") instead of the *percentage of revenue* ("POR") model the Panel adopted in *Phonorecords III.*

Due to the MMA[6]. changing the 801(b) standard in *Phonorecords III* to a "willing buyer, willing seller" standard for *Phonorecords IV,* I understand that this legal change creates a possibility where Your Honors may likely adopt a per-play model here in *Phonorecords IV,* which I would welcome as would NMPA and NSAI.

For these reasons I am offering both models until Your Honors determine which model is most appropriate for Subpart C streaming — either a reasonable per-play rate proposal, or a reasonable percentage of revenue rate proposal, or a "greater of" proposal, or some new rate structure?

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[6] GEO thought of the original idea for the MMA as a "songwriter bill" that would abolish the 1909 compulsory license on all American songwriters and music publisher. In April of 2013, GEO met with several Senators' offices, in particular, a meeting I had with Senator Jay Rockefeller's counsel regarding a bill to help songwriters. However, the moment I told attorney/lobbyist Mr. J. Daniel Walsh from Greenberg-Traurig that I just met with Senator Rockefeller's office, Mr. Walsh exclaimed to me, *"George, what I great idea, I can't believe we never thought of that.*" If Mr. Walsh had never said that I would never make this claim. In addition, Mr. Walsh immediately ran down the hall of the Capitol building and told former Grammy lobbyist Daryl Friedman, who was screaming at me a foot from my face for simply meeting with my Senator (an American right) about an idea he never thought of. Mr. Friedman then literally stole the idea from me of doing a bill to help songwriters. Mr. Walsh and Mr. Friedman, along with Mr. Neil Portnow, former Grammy CEO, not only stole my idea for a songwriter bill, but then *reverse engineered it to do the opposite of abolishing the 1909 compulsory license,* and turned it into the Songwriter Equity Act — which later became the MMA. Then, former Pandora in house counsel and attorney in CRB proceedings, attorney Chris Harrison, further reversed engineered the idea from abolishing the compulsory license on all American songwriters, to creating a NEW compulsory license, creating a new "mechanical" (which is so confusing) and at $.000 cents, taking songwriters' legal right to sue the Services for retroactive copyright infringement, and finally, making sure we have no sales or download income. I now call the reverse engineering of my songwriter bill idea, the "Chris Harrison Special". NMPA fully supported this bill which contained the new willing buyer, willing seller which was going to save the music industry once more.

I also understand that the ruling by the DC Circuit in *Johnson v Copyright Royalty Board* allows Your Honors additional freedom to choose the best parts from *all* proposals and to *mix and match* these best parts into a final determination.

For these reasons, instead of offering only one proposal for rates and terms, I offer Your Honors several proposals to choose from, with additional options.

Again, I wish I had experts and Nobel prize winning economists to create economic models of what would happen if the *sale and stream were merged*, like Apple TV or Amazon Prime, with a BUY button, or if a song received 1 million streams, and customers were offered a *voluntary* BUY to pay for the copyright, how many of those listeners would convert to sales? How many if it was mandatory?

PROPOSED RATES

I. GEO respectfully proposes the following modifications to **rates**;

(1.) to adjust the 9.1 cent (new Subpart B) mechanical sale rate for *lost inflation,* from 1909 to 1978 using the Consumer Price Index ("CPI"), and then CPI-U indexed going forward, exactly as the Panel determined in the recent *Web V*[7].

(2.) an optional Subpart C, 50/50 *percentage of revenue* streaming proposal,

(3.) an optional Subpart C, minimum $.026, et al, *per-play rate* streaming proposal,

(4.) a voluntary *sales model* (*See* BUY Button) similar to if Apple Music and iTunes were combined,

(5.) or a mandatory sales model similar to number (4.) above, creating a *new rate structure* merging the **subscription/access streaming** model and the **old record sales** model ie., *the same exact business model* as Participants' Apple TV and Amazon Prime.

(6.) indexing the (old Subpart B) Subpart C §385.20 thru §385.22 interactive subscription streaming rates to CPI-U inflation going forward (exactly as NMPA and NSAI have now proposed in their October 27, 2022 WDS on page B-17), but with a possible *retroactive* adjustment from 2008 (from the effective date of *Phonorecords I*), or from 2018-2022 to at least cover the *Phonorecords III* (remand) time period.

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[7] https://www.govinfo.gov/content/pkg/FR-2021-12-01/pdf/2021-26062.pdf Federal Register, December 1, 2021. Webcaster Statutory License.

(7.) While we wait for the outcome of the *Phonorecords III (*remand), and considering the Katz, Watt, and Eisenach analyses (and of Shapley), GEO will respectfully proposes a 44% rate increase of the 9.1 cents to approximately 13.1 cents, if *Phonorecords III* is upheld.

GEO also proposes a 44% increase of 56 cents if *Phonorecords III* is upheld and if Subpart B is adjusted retroactively for inflation. (to approximately 81 cents per-song combined.)

II. PROPOSED TERMS

II. GEO respectfully proposes the following modifications to the current **terms** set forth in 37 C.F.R. §385 Subparts B and C (and possibly D);

(1.) Abolish unlimited, *limited downloads* with no sale and in exchange for a 9.1 cent sale (or new rate that is adjusted for inflation and/or 44% increase),

(2.) *Create a voluntary BUY Button* for sales similar to Music Choice's BUY Button[8] or Apple's iTunes has always been, but now combined with Apple Music,

(3.) *Create a Tip Jar* - GEO proposes a tip jar, better than the ones on Spotify[9] [10], and Twitter[11] [12] [13] and for all of the Services.

If the Services are willing to do a Tip Jar they should be willing to do a BUY Button. They are the same practical function (customers paying dollars to songwriters for their copyright and property) except one is *charity* and one is paying for *the cost of goods sold* a.k.a. — **the Songwriter Survival Rate or ("SSR")**.

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[8] As far as GEO knows, the BUY Button idea was first introduced into these proceedings by Music Choice in SDARS III, and not GEO. GEO is only using an idea already present and accepted in CRB proceedings. NO Party ever objected to the BUY button in SDARS III and may be rate court precedent at this point. And while participants may argue that the Music Choice BUY was unsuccessful or a "pain point" for customers, their BUY button was never promoted. *Furthermore, a BUY button has never been offered to streaming customers on Apple, Amazon, Pandora, Google, and Spotify.* If it was offered, customers would use it, and if it is not offered, then it is difficult to judge its effectiveness with no economists or money for economists.

[9] https://artists.spotify.com/blog/introducing-artist-fundraising-pick Spotify Artist Fundraising Tip Jar.

[10] https://www.vice.com/en/article/k7qqw3/spotify-tip-jar-donations-fair-pay-royalties-musicians Vice.

[11] https://blog.twitter.com/en_us/topics/product/2021/introducing-tip-jar Twitter tip jar.

[12] https://www.musicxtechxfuture.com/2021/05/11/why-twitter-is-better-positioned-for-tipping-musicians-than-streaming-services-like-spotify-and-soundcloud/ Twitter tip jar article.

[13] https://blog.twitter.com/en_us/topics/product/2021/introducing-tip-jar Twitter tip jar on Twitter.

III. OTHER ISSUES

III. GEO respectfully proposes several **other issues** to please consider and carefully weigh in general, but also using the four prongs of the new willing buyer, willing seller standard and pursuant to 17 U.S.C. § 115(c)(1)(F)(i), *et al.*. They are;

(1.) 3 foreign corporations[14] *negotiating with themselves* which can't be legal, and not what Congress intended,

(2.) there can be *no willing buyer or willing seller* if ANY record label and publisher are *negotiating with themselves* (which clearly violates Prong 2 - the *Same* (or similar) *Parties Test*), under the new willing buyer, willing seller.

These 3 major record labels and major publishing companies *are clearly the same parties*, or "similar parties", negotiating with themselves (which again violates Prong 2).

There can also be *no willing buyer or willing seller* if, again, 3 parent corporations are negotiating with themselves, much less *foreign headquartered* and *vertically integrated* corporations like **Vivendi** in France or **Access Industries** in Russia — in an American courtroom to set all their competitions' income at **zero.**

(3.) the *shadow of the compulsory license* is still very relevant, in general, and I have always brought this issue up since I first heard SoundExchange propose it in *SDARS III* or *Web IV*.

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[14] Access Industries in Russia owns both Warner Music Group and Warner Music Publishing just like Vivendi in France owns both Universal Music Group and Universal Music Publishing.

NMPA and NSAI have also argued the powerful and very real below-market effect the shadow has on all rates.

There is also a clear effect of the shadow on all so called "voluntary agreements".

I understand that because of the old 801(b) standard, the true weight, value and practical reality of the shadow may not have been permissible to fully consider.

We pray the shadow can finally be lifted under the new willing buyer, willing seller standard to closer simulate an actual free market, freeing Your Honors to now consider and act, even *sua sponte*, on issues that were closed off to the Panel under 801(b), pre-MMA, and pre-*Johnson*.

(4.) most importantly, the *cannibalization of musical works or the substitution effect of streaming on sales* could now be *the most important issue* in *Phonorecords IV* because of the legal change from 801(b) standard to a willing buyer, willing seller standard, other changes in the MMA, and the *Johnson* ruling.

I pray the substitution of sales by streaming can finally be solved.

If the substitution of the sales format by streaming is now a main issue, GEO respectfully requests it be addressed and Your Honors give it the full weight that it deserves in *Phonorecords IV*.

(5.) The *fraud* on GEO by NMPA, NSAI, and RIAA to achieve their so-called "*voluntary settlement*" to continue freezing the 9.1 cent Subpart B mechanical rate for *all* American songwriters. As previously mentioned, NMPA, NSAI, and RIAA lied to the Panel by telling Your Honors that GEO had *no intention* of filing a WDS

that changed any of the rates, and I was only going to propose a BUY button, (that would also change the rate). They completely disregarded that I am a Participant, and then claimed my Objections, were not objections at all, **just to quickly force through the settlement.** So, *all of these claims about me are not true and a fraud*.

Other official *Phonorecords IV* attorney Commenters and songwriter Commenters in the record pointed out in their testimony the way they saw NMPA, NSAI, and RIAA's settlement, as well as their view on how they falsely responded (or willfully failed to respond in their Replies) to GEO statutorily Objecting to their "voluntary settlement" as a Participant. Their observations here are important.

(6.) The anti-trust and anti-competitive nature of 3 foreign headquartered corporations *setting the rates for all their American music competition*, while *negotiating with themselves,* and to *price-fix* all their American music competition at $.00012 cents per-stream, **seems very evident**, and not the intent of Congress.

3 foreign corporations using the U.S. federal government rate setting process under a 1909 compulsory license, to set their U.S competition at ZERO CENTS seems fundamentally unfair to American songwriters.

The U.S. federal government is supposed to be protecting songwriters from unfair practices, substitution of sales by streaming, and rampant anti-competitive behavior *by actors foreign and domestic*.

(7.) And while I have full faith and trust in Your Honors who have treated me extremely well and for which I am very grateful, this last issue is not a reflection on the CRB or Your Honors in any way, but it is important to mention.

I do believe that *the Services and the 3 foreign corporations have "hacked" the CRB rate setting* ***process*** *to their complete advantage over songwriters,* for lack of a better term. Again, I mean no disrespect and feel the *CRB's hands have been tied*.

In other words, over the past 15 years counsel for the Services and Labels have intentionally "cabined" the CRB through legislation, rate court precedent, mainly thru §385 Redline submissions, and using the basic nature of administrative law rate proceedings by the government to manage a marketplace.

The Services and Labels have "hacked" the CRB rate setting process *by helping write their own laws to the detriment of all songwriters* and it is to keep their costs down, stable, way below-market, their stock price rising, and with no disruptions, and eliminated all copyright liability — while all American songwriters suffer at $.00012, with no sales, and barred from ever suing for past infringement.

When you look at the big picture, *the MMA gave the Services everything they ever wanted* and then enshrined it into law — zero cents royalty costs forever, no pesky sales, and no liability forever — sounds like a great deal for the Services.

I pray that the *Johnson* appeal's "mix and match" ruling, as well as the new MMA rules, and newly minted WBWS, allows Your Honor new freedom to *truly account for substitution of sales by streaming and all the other issues listed above.*

Some of the above mentioned proposals and rates and terms will be explained and argued below, and in more detail in GEO's attached Written Testimony.

BACKGROUND

5 years ago in *Phonorecords III* GEO proposed several changes to rates and terms and many of those are *exactly the same* in this proceeding.

2 of these exact same problems I previously proposed solutions for that must still be fixed to help all American songwriters and independent publishers include;

1.) plugging the free unlimited "limited download" loophole that lets the Services and 3 foreign corporations ***give away billions of songs*** *with no payment,*

2.) indexing the frozen 9.1 cent mechanical sales rate for inflation going forward, and also **retroactively for 89 years of lost inflation once and for all**.

Unfortunately, marketshare and complementary oligopoly power are what drives CRB rate proceedings, not individual American songwriters and their former bundle of exclusive rights. These exclusive rights have been incrementally stripped away by the Services, 3 foreign corporations, and our own songwriter and publisher lobbyists — **one who is paid $2 million dollars a year just in salary** from these 3 foreign corporations.

In fact, all American songwriters and music publishers are clearly **subsidizing** the Services while being price-fixed and frozen in an extremely anti-competitive manner by these 3 foreign corporations — WMG, UMG, and SMG.

As the Copyright Office stated in the executive summary of its *Copyright and the Music Marketplace* copyright reform study, "*There is no policy justification for a*

standard that requires music creators to subsidize those who seek to profit from their works."[15] Yet, that is precisely what we American songwriter are doing.

That includes foreign investors, foreign corporations, foreign governments, or foreign licensees, not matter how big or small they are.

American songwriters and music publishers have been **subsidizing 3 of the biggest US monopolies in American history**, while simultaneously **being price-fixed by 3 foreign, billion-dollar corporations,** using marketshare and complementary oligopoly power in a US courtroom as their weapons and tools.

3 foreign companies are helping set the royalty rates for *all* American songwriters, and at $.000, and that is the practical reality songwriters are *forced to endure for decades* by their own government that is supposed to be protecting them.

We must protect millions of individual American songwriters and their constitutionally protected property, not just monopoly corporations and their power.

Yes, our exclusive rights have been completely stripped away and as former Register of Copyrights from (1985-1993)[16], Mr. Ralph Oman correctly states regarding:

> "the ongoing debate about the true nature of copyright—as an exclusive private property right, **or as a limited right to be doled out stingily, riddled with exceptions and limitations, to be given away free-of-charge.**
>
> It has become fashionable in some academic circles to treat copyright exclusivity as a quaint but outmoded notion, and its advocates as hopeless naïfs. But … by

[15] Copyright and the Music Marketplace http://copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf

[16] http://www.amazon.com/Constitutional-Foundations-Intellectual-Property-Perspective/dp/1611637090/ref=sr_1_3?s=books&ie=UTF8&qid=1440509244&sr=1-3&keywords=randolph+j.+may

going back to first principles and natural rights, show us that an exclusive property right is at the heart of copyright protection.

Their learned analysis should be widely read, especially by Members of Congress and judges, to help them understand the true nature of the debate and the deep roots of the copyright pedigree as a natural private property right—historically unique, socially revolutionary, and worth fighting for." (emphasis added) [17] [18]

So, that's where we are in this proceeding. Will we start protecting the **exclusive private property right** of all American songwriters and music publishers *subject to* the compulsory licenses OR will we continue to treat my exclusive right to my own song, that I created and allegedly own, as a **limited right** to be doled out stingily, *riddled with exceptions and limitations, and given away free of charge in Subparts B, C, and D*?

"Doled out stingily, riddled with exceptions and limitation, and given away free of charge" *are the very definitions of §385 Subparts A, B, C and D* and *these codes ARE the exceptions and limitations*, yet they are now "rate court precedent".

To me, *complementary oligopoly power* is the reason why §385 is riddled with so many exceptions and limitations on songwriters' exclusive rights, and why songs are now given away free of charge.

The Services and foreign Labels wrote their own laws to benefit their self-interests, and left American songwriters and copyright owners holding the bag, so to speak.

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[17] The Constitutional Foundations of Intellectual Property: A Natural Rights Perspective" by Mr. Randolph May and Mr. Seth Cooper. https://www.amazon.com/gp/product/B0859L5PSQ/ref=dbs_a_def_rwt_bibl_vppi_i1

[18] http://www.amazon.com/Randolph-J.-May/e/B00DWY7EG4/ref=dp_byline_cont_book_1

NO CHANGES EXCEPT FOR A NEW SUBPART C INDEXING BY NMPA

In my October 17, 2021, Written Direct Statement I wrote, "Every other Participant in these proceedings is calling for *no change* in rates, terms, service categories, or rate structures and for everything to remain the same", and for the most part that remains true.

Since then, I have learned in the Services' WDS's that they want to *lower rates* back to 2012 levels of 10.5% percent of revenue and therefore, until the *Phonorecords III* (remand) is determined, there will be no change at this point.

And if the Services win the *Phonorecords III* (remand), then rates will not change and remain at 10.5% percent.

As Judge Barnett noted in a recent March 8, 2022 teleconference call, some of the Services' Written Direct Statements in *Phonorecords IV* are not really new proposals, and as Your Honor observed "*a lot of the written direct statements say — well, it all depends on what happens in Phonorecords III.*[19]"

However, one significant thing that *has changed* since I wrote in my October 13, 2021 WDS, "*Even our own songwriter lobbyists don't want an indexing of Subpart C subscription, interactive streaming rates tied to the CPI-U inflation rates calculated by the Bureau of Labor Statistics ("BLS").*"

Miraculously, NMPA and NSAI have suddenly decided to jump on the *inflation* bandwagon with a new proposal **to index Subpart C subscription**

[19] March 8, 2022 Teleconference hearing video of *Phonorecords IV* — by Pryor Cashman, *See* at 19:20 min.

streaming rates to inflation, *which is great news*, and GEO would like to *join* NMPA and NSAI on this one issue. NMPA Counsel has assured me that their new streaming inflation proposal on Page B-17 of their October 27, 2021 WDS is exactly like the inflation indexing Your Honors determined in *Web V*.

Unfortunately, NSAI and NMPA are still *oddly and vehemently opposed* to any type of **Subpart B mechanical inflation indexing to the frozen 9.1 cent sale**, which is perplexing and seems more than hypocritical, since it is *they* who keep freezing it.

So, as I also previously wrote, "*Even our own songwriter lobbyists want no increase in the 9.1 cent royalty,"* and **there's been no change in NMPA or NSAI's position on this issue** at this point in time.

Since NMPA and NSAI did not propose a 9.1 cent mechanical indexing going forward in their WDS, I pray they come around to support GEO's proposal to index the 9.1 cent mechanical going forward, and also retroactively which is vital to paying songwriters **dollars** that they deserve — not *nano-pennies forever with no sales*.

Why NMPA and NSAI, *our own songwriter lobbyists are still fighting me* to *keep this 9.1 cent rate frozen* for another 5 years, *hurting all American songwriters*, is still a mystery and I pray they will finally come to their senses and stop fighting.

How can NSAI and NMPA, two lobbyists that purport to represent **all** American songwriters and music publishers, but be *against indexing vinyl and*

downloads to CPI-U inflation, but are now suddenly *for indexing streaming* to CPI-U inflation?

Isn't that completely hypocritical?

Especially when so many other songwriter groups like the Songwriters Guild of America ("SGA"), **that represent hundreds of thousands of songwriters**, is calling for an indexing the 9.1 cent mechanical, and now as an official Commenter in this proceedings, *along with other songwriters groups from around the world*!

NSAI is only *for* inflation indexing for songwriters when it suits them, but *deny* it exists when they want to help 3 foreign corporations keep their own songwriting costs down, and their bottom lines up.

Unfortunately, inflation affects all American songwriters and NSAI and NMPA continue to deny this stark reality on 9.1 mechanical rates for its own self-interests (and 3 foreign corporations), *not in the interests of all U.S. songwriters*.

So, why this miraculous change, buried on Page B-17 of NSAI and NMPA's red line regulations in their *Copyright Owner' Proposed Rates and Terms* CORRECTED version submitted on October 27, 2021 (and on October 13 on B-6)?

Why would NMPA and NSAI agree that all American songwriters and independent music publishers deserve a Subpart C streaming indexing to CPI-U, but not a Subpart B mechanical indexing to CPI-U?

Either way, GEO is glad to hear they have finally "partly" come to their senses and pray NSAI and NMPA will finally see the light as they did on Subpart C, and endorse GEO's 9.1 cent mechanical Subpart B indexing as well.

I. PROPOSED RATES - ADDITIONAL INFORMATION AND EVIDENCE

GEO proposes the following modifications to **rates** set forth in 37 C.F.R. §385 (the old Subpart A) for Subpart B traditional mechanical rates and (the old Subpart B) Subpart C interactive streaming rates, including the "Subpart B Configurations".

1.) ***Increase the 9.1 cent mechanical rate for lost inflation to 56 cents*** - like previous attempts by GEO. While an inflation adjustment may still be considered a *rate* increase, it's just equalizing the rate to 2022 prices, making up for staying at such a below-market rate for so long, and since 1909 is lot of built-up inflation.

I respectfully propose that the 9.1 cent mechanical be adjusted by Your Honors, preferably by my proposal or *sua sponte,* to finally equalize the 89 year gap of lost or ignored inflation from 1909 to 1978, and 2008 respectively.

Even NMPA's Mr. David Israelite, and prominent attorneys such as former Counsel for the Copyright Office, Ms. Jaqueline Charlesworth, agree that the frozen 9.1 cents should be adjusted to at least 50 cents for lost inflation.

All this does is adjust the 9.1 cents to a break-even point for 2023 thru 2027.

All rates would be tied to the Consumer Price Index CPI-U to adjust for future inflation, just as the Panel indexed sound recordings to the CPI-U in *Web IV.*

The Panel also has a long history of §115 mechanical rate inflation adjustment precedent[20] tied to the CPI from 1978 to 2006 where the rate has been frozen and this KEY evidence is even on the CO website.

Other precedent that may apply to *Phonorecords III,* if it takes much longer, but this statute also demonstrates that the "general rule" is to at least consider inflation as a remedy, and the CRJ's "shall adjust" in this example.[21]

Pursuant to §805(3) the "General rule for voluntarily negotiated agreements", when applicable, the code states "the Copyright Royalty Judges *shall adjust the rates*…to reflect national monetary inflation…) (emphasis added)

GEO offers more inflation evidence and argument in his Written Testimony, Amended Written Testimony and this Amended Written Direct Statement.

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[20] https://copyright.gov/licensing/m200a.pdf U.S. Copyright Office website, Mechanical License Royalty Rates from 1909 to 2006.

[21] 17 U.S.C. §805(3), https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title17-section805&num=0&edition=prelim, also Pub. L. 108–419, §3(a), Nov. 30, 2004, 118 Stat. 2360 General rule for voluntarily negotiated agreements, "Any rates or terms under this title that… (3) are in effect for a period shorter than would otherwise apply under a determination pursuant to this chapter, shall remain in effect for such period of time as would otherwise apply under such determination, *except that the Copyright Royalty Judges shall adjust the rates pursuant to the voluntary negotiations to reflect national monetary inflation during the additional period the rates remain in effect*. (emphasis added)

2.) ***Subpart C (old Subpart B) streaming — Percentage of Revenue***

Similar to the findings of the United Kingdom government DCMS review[22] by Parliament[23] which found that streaming corporations, record labels, and the music industry in general needed a "complete reset", and GEO completely agrees.

GEO also agrees with Parliament that the CRB and Americans have the exact same problems as the UK, because it's the exact same 3 foreign record labels that are causing these exact same problems that hurt all American songwriters and music publishers.

I pray this Panel can now, under willing buyer, willing seller, as the UK Parliament has proposed, that **streaming returns must be equally shared 50/50 between sound recordings and musical works.**

The time has come and it's only fair.

The UK Parliament report accurately said that streaming companies offer "pitiful returns" to songwriters and that is no different here in the United States since it's the same 3 foreign owned corporations that the UK Parliament is referring to.

Therefore, and based on the DCMS evidence and other factors, if Your Honors choose a percentage of revenue model, GEO respectfully proposes the exact

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[22] https://variety.com/2021/music/news/uk-government-streaming-report-labels-artists-1235020210/ July 14. 2021. U.K. Parliament Slams Major Music Labels, Backs Artists in Damning Report on Streaming Revenue.

[23] https://committees.parliament.uk/publications/6739/documents/72525/default/ July 9. 2021The House of Commons, Digital, Cultural, Media and Sports Committee (**DCMS**) "Economics of Music Streaming" Report.

same split of streaming revenue as the UK government to a fair **50/50 percentage distribution** between musical works copyrights vs. sound recording copyrights.

This equal distribution between songwriters and music publishers on one hand, and artists and records labels on the other hand is long overdue and 50/50 is fundamentally fair.

One major reason why there is a 75/15 percentage disparity between sound recordings and music works royalties over the past 15 years is because the 3 major records labels and 3 major publishing companies *are the same companies, negotiating with themselves, and not at arms-length in violation of Prong 2.*

So, the 50/50 equal split the United Kingdom government recently proposed is just like SoundExchange distributing sound recording royalties that are split 50/50 between *artists* and *record labels*, which is just like the industry standard 50/50 split of a musical work "pie" between *songwriters* and *publishers*.

So, it's time for the United States to adopt the same 50/50 percentage split between *musical works creators* and *sound recording creators* in Subpart C — if Your Honors choose to continue with a percentage of revenue model over a per-play streaming model.

In fact, it's time for a 50/50 split on all Subpart B downloads and sales between record labels and songwriters/publishers, but that may not be covered under CRB rules.

It's also interesting that British MP's recognize 4 major problems that are the exact same problems American songwriters need fixed.[24]

They are:

1. "pitiful returns" that creators receive from streaming:

2. disparity in power between creators and companies:

3. lack of regulation around streaming, such as playlist algorithms; and

4. lack of transparency in the industry.

GEO offers the following rates and terms for Subpart C streaming if Your Honors choose a percentage of revenue model in your final determination.

SUBPART C STREAMING RATES AND TERMS FOR PERCENTAGE OF REVENUE

On October 17, 2021, GEO submitted rates and terms in his WDS but inadvertently omitted a mechanical-only subscriber rate now offered at ($2.60).

GEO also submitted a 50/50 split between musical works and sound recordings for Subpart C but omitted a proper percentage of service revenue model rate. GEO proposes 25% of service revenue while holding at 50% of label payments.

Finally, GEO previously offered 2 per-play rates, but now only proposes one, *minimum* per-play rate of $0.0026 cents. These rates are by the *greater of* formula.

GEO offers and proposes *other* benchmarks such as Tidal and Apple who reportedly pay *1 cent per-stream,* as well as RIAA and catalog sales benchmarks.

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[24] https://houseofcommons.shorthandstories.com/music-streaming-must-modernise-DCMS-report/index.html?utm_source=committees.parliament.uk&utm_medium=referrals&utm_campaign=economics-music-streaming&utm_content=organic House of Commons Report on Economics of Streaming.

The above proposed rates include, and do not preclude, GEO's previously proposed rates and terms of a 9.1 cent lost inflation adjustment, several BUY button configurations, terminating the unlimited limited download loophole, *et al.*[25]

In accordance with 37 C.F.R. § 351.4(b)(3)[26].

[25] On October 24, 2021, GEO submitted *Revised Rates and Terms* to GEO's Written Direct Statement ("WDS").

[26] https://www.ecfr.gov/current/title-37/chapter-III/subchapter-B/part-351#351.4, 37 C.F.R. § 351.4(b)(3), *Claims*, "No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to, and including, the filing of the proposed findings of fact and conclusions of law."

3.) ***Subpart C (old Subpart B) streaming — Per Play Model*** - Exactly like the most recent *Web V* final determination, and to finally pay §114 and §115 music creators *equally*, GEO respectfully proposes the exact same rate of **26 cents**[27] for subscription per-play for all digital streaming Subpart C §115 musical works. It's time to equal the value gap and pay disparity in copyrights, especially for those concerned with equality and equity.

Of course, all *Phonorecord IV* rates should at least be tied to the CPI-U, just like the Panel tied sound recordings to the CPI-U in *Web IV*. American songwriters should no longer be discriminated against and cheated with nothing less than **26 cents.**

As stated above, GEO offers and proposes *other* benchmarks such as Tidal and Apple who reportedly pay *1 cent per-stream,* as well as RIAA benchmarks, and catalog sales benchmarks throughout this AWDS and Amended Written Statement.

[27] https://app.crb.gov/document/download/25678, *Web V* final determination per performance rate.

4.) ***Voluntary Sales Model*** **-** Just like Apple's iTunes **has successfully operated for over 20 years,** GEO proposes incorporating a *voluntary* BUY button to all the Services, primarily adjacent to every song, album, and playlist. The public should have the freedom to buy and download songs, albums or playlists if they so chose, to support their favorite artists or take their songs with them to listen offline (which they currently do for free and with unlimited downloads).

Most importantly, songwriters should be paid for their property and reproduction of their copyright.

The BUY button then disappears after the song is bought the customer can seamlessly navigate and stream till their heart's content (still at the $.000 Subpart C streaming rate), but with no more visible BUY button to distract the customer, and what GEO would call a "pain point", which I first heard one Pandora executive use while testifying in the *Phonorecords III* hearings.[28]

This valuable line extension or additional product to purchase creates additional revenue for all the music creators — and to the Services if they choose to participate in this additional income, as GEO proposed in *SDARS III* and *Phono III*.

Furthermore, as I have argued before, *a BUY button has never been offered by any of the Services*, only experimental tip jar charity by a few, so this gives American music customers, which used to belong to American music publishers and record labels, an opportunity for the very first time to buy their favorite songs,

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[28] As Judge Barnett will surely remember her hilarious response, and what I consider the greatest moment in CRB hearing history, "*Pain point? I'll give you a pain point, gall bladder surgery, that's a pain point!*" (paraphrased from memory)

albums, and playlists — just like the tried and true sales business model that prospered for over 100 years until a the Silicon Valley streaming "access" model came along and destroyed it.

Silicon Valley destroyed it for great and legendary songwriter Mr. David Crosby who recently said "*the streamers stole my record money*" and **why he sold his entire catalog,** Crosby clearly blamed it on the Services, and Mr. Crosby is 100% percent correct, the streamers did steal his record money through great lawyering in *Phonorecords I, II, III.* But in *IV*, we have an opportunity to fix this.

Silicon Valley also destroyed the profits and income of the great and legendary songwriter Mr. Hugh Prestwood, which GEO recently mentioned in the record, writer of "*The Song Remembers When*" (one of my all time favorite songs that also perfectly rhymes). Prestwood also fairly and deservedly blames the streaming Services for taking his record money as well.

Both Mr. Crosby and Mr. Prestwood are 100% correct in their assessment and this is basically direct testimony by 2 of the greatest songwriters ever!

And while I can put their direct quotes in the record, what they are saying will be ignored by the Services and other Participants, but I pray Your Honors will take their true and poignant statements to heart and weigh them with great weight in your final determination please.

Remember, "*the streamers stole my record money*" said David Crosby and if the Services didn't didn't steal his record money, **he would not have to sell his entire catalog! That's the point.**

And when the Services try and tell the Panel that they single-handedly "saved the music industry", remember David Crosby's words, "*the streamers stole my record money*".

"*The streamers stole my record money*" is quite the opposite of the Services fairly tale and streaming and destroyed American songwriters' lives in the process.

That is the cold, hard truth.

The Services only saved 3 foreign corporations from themselves and transferred billions of dollars in value of American copyright creators own property, to themselves, and to foreign countries where American songwriters still have an ownership interest in their songwriting portion of songs they wrote, but now controlled and exploited by 3 Russian, French, and Japanese corporations.

Streaming destroyed the entire songwriting and music publishing industry, period. I know all we look at are total revenue numbers and they are up, so everyone must be doing great and prospering, but it's the opposite and until we realizes **streaming decimated all the creators**, American songwriters don't stand a chance.

And I understand that that Your Honors' are "cabined" by the CRB code and laws, as Judge Strickler recently referred to, and I also realize that Your Honors are very sympathetic to our plight and truly dire predicament this compulsory law and rates of $.000 have done to every songwriters' real world income.

Maybe the 801(b) standards were to legally constricting, but I pray you can see the effect of practical reality of $.000 per-stream, with no sales, on individual American copyright creators.

Songwriters happen to write songs as a profession, but are cursed to live under a federal compulsory licensing scheme that steals the *entire* value of their labor and property, so Your Honors are our last and best hope.

Of course, I realize the original intent of these compulsory licenses was not only help 3 foreign corporations and 3 of the worlds biggest corporations/ monopolies, but that's how it turned out in 2022.

Millions of American citizen songwriters have a God given right to profit from their own property and from their own creations, new or legacy.

We need to restore the value and profit to songwriters, period.

So, as it turns out Music Choice seems to be the creator of the BUY button on their cable music channels and where I first learned about it in *SDARS III*.

So, please blame Music Choice for their idea, not GEO.

5.) ***Mandatory Sales Model — New Rate Structure -*** Apple TV[29] *already merges the sale and the stream* by combining both models — charging customers $9.99 per month for a subscription and then a "BUY" button at $14.99 or to actually "RENT" the movie $5.99.

GEO has proposed countless options over 4 rate proceedings to try and negotiate additional income stream while going to great lengths to try and come up with ideas that do not disrupt the Services' business model, and *only add income to it, this goes for the 3FHRLs as well*.

Therefore, instead of trying to negotiate *with people who will never negotiate,* I believe that the only way to fix the rate structure is to force the paying *customer* **back into the equation**, which means the CRB forcing the Services and the 3FHMRL's ('3 Foreign Headquartered Major Record Labels") to adopt a *mandatory* BUY button and force every subscriber to pay for every song, album or playlists just like the good old days and just like EVERY songwriter I have spoken to actually WANTS - *pay us for our songs*, period. I realize the CRB can't lawfully do this, and why the compulsory license should by abolished by Congress, and set songwriters free.

And this horrible mandatory BUY button is on top of the $9.99 subscription fee that only goes to the Services.

This sounds harsh until your realize **this is exactly what Participants Apple and Amazon or doing with television and film** since not paying actors,

[29] https://support.apple.com/en-us/HT201611

cinematographers, directors, producers, craft services, computer animators, etc. is UNSUSTAINABLE — and no different than the music industry, or any business, when it comes to the cost of goods sold or "survival rate".

The Services and 3FHMRLs are *forcing* **all** American songwriters and music publishers to take *zero cents* for their songs, while *fighting* to keep American songwriters with *zero sales* and *zero increases in the 9.1 cents*, while forcing American songwriters *to give away their property* with unlimited, limited downloads as well.

It may be time to bring back the Lawyer Rate Board or ("LRB") where LawExchange (a division of the ABA) collects all American attorneys' billable hours at a newly minted statutory rate of $.00091 (Apple's *Phono III* proposed per-play streaming rate) per-billable hour under a new compulsory license passed by Congress?

How does that sound counsel?

$.00091 per billable hour, yes, 3 zeros, exactly the same amount that counsel thinks songwriters are worth.

Oh, but that would never happen.

Does it make you a little mad when you think about it for 15 seconds?

Do you think, "How dare Johnson even suggest a LRB or $.00091 per-hour for us lawyers?" That would be crazy right?

But if the National Association of Broadcaster's ("NAB") argument is true, that copyright is only supposed to benefit the public, and not the creators, then shouldn't attorneys *only* benefit the public too?

$2,000 per-hour over 2 to 5 years of litigation seems a little rich to any reasonable person. As my attorney dad would call it, "the gravy train".

$2,000 per-hour for attorney to set songwriter property at $.00091 cents per-song, also seems unfair, and probably would to any reasonable person.

Why shouldn't all American attorney's serve their community and sacrifice for a cause "greater than themselves". Isn't that the entire point of serving the public, especially as officers of the court?

So, I would respectfully ask counsel to "put yourself in our shoes" and see the incredible damage you are doing to generations of American songwriters, new, current, and legacy at $.00091 to "keep your costs down". I know you think you saved everybody, but you put 3,600 songwriters out of business FOR GOOD on Music Row and I watched it happen day by day with my own eyes — that is real evidence and again, NMPA evidence submitted in *Phonorecords III*.

All because *Google thought songs were worth the same as Google ad-click rates* at $.00000007 in 2006 in *Phonorecords I*, I presume proposed by Mr. Lee Knife from DiMA (Digital Music Association — funded by Google).

So, it's time for music customers to pay for the product like the did for over 100 years.

GEO proposes a mandatory sales model creating a *new rate structure* merging the **subscription/access streaming** model and the **old record sales** model ie., *the same exact business model* as Participants' Apple TV and Amazon Prime, plus Disney+.

So, when applied to music, this tried and true business model for Apple and Amazon, two Participants, is somehow radical or "unreasonable" in legal terms and that is complete and utter nonsense. A corrupt and one-sided compulsory license grandfather in from 1909 the only difference.

The subscription fee is for access and convenience and portability, not ownership and now unlimited ownership. Some argue streaming is just *renting music*, well Disney+ and Apple TV, a Participant, *force customers to pay to RENT* a movie or television *episode* at $2.99 to $5.99 on TOP of the Subscription fee.

For 100 years **the customer paid the songwriter and publisher directly and that was a solid business model** which I am proposing to merge with the current access model, **or supplant it entirely, like every other normal business model that makes a profit.**

The access model substitutes for sales income and the access model is not a constitutional right, but an exclusive right is.

American songwriters and music publishers (singers, artists, and independent labels too) have been exploited and used by these 3 foreign corporations for 20 years now and its time for songwriters and publishers to start using these public streaming platforms, built on the backs of American songwriters

and music publishers, *to finally benefit us with dollars* and terms we want, not nano-pennies with no sales and endless empty promises.

6.) ***Subpart C (old Subpart B) streaming — CPI-U Inflation Indexing and possible retroactive adjustment*** — Exactly like the most recent *Web V* final determination, and to finally pay §114 and §115 music creators *equally*, GEO respectfully submits this proposal to index Subpart C § interactive subscription streaming to CPI-U inflation rates, and a possible retroactive adjustment to either 2008 at the implementation of *Phonorecords I,* or the beginning of the *Phonorecords III* term of 2018.

On January 6, 2022, GEO filed a duplicate motion in *Phono III* and *IV* to index Subpart C (old Subpart B) interactive streaming rates to the BLS CPI-U inflation index. This Motion was denied by Your Honors as more appropriate for a Written Direct Statement proposal and why I am offering it here.

GEO once again asks relief from no inflation indexing, now and retroactively, for both Subpart B traditional mechanicals and Subpart C streaming.

As mentioned above, NMPA and NSAI included in their red line submission on Page B-17 of their CORRECTED WDS submitted on October 27, 2022, as follows:

> "Annual rate adjustment. The Copyright Royalty Judges shall adjust the Subscriber rate and Play rate each year to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index for All Urban Consumers (U.S. City Average, all items) (CPI-U) published by the Secretary of Labor before December 1 of the preceding year. The calculation of the rate for each year shall be cumulative based on a calculation of the percentage increase in the CPI-U from the CPI-U published in November, 2022

(the Base Rate) and shall be made according to the following formulas: for the Subscriber rate, (1 + (Cy – Base Rate) / Base Rate) × $1.50; for the Play rate, (1 + (Cy – Base Rate) / Base Rate) × $0.0015; where Cy is the CPI-U published by the Secretary of Labor before December 1 of the preceding year. The adjusted rate shall be rounded to the nearest fourth decimal place. The Judges shall publish notice of the adjusted fees in the Federal Register at least 25 days before January 1. The adjusted fees shall be effective on January 1." (Page B-17)

ADDITIONAL EVIDENCE AND CRB PRECEDENT OF INDEXING OF ROYALTY RATES TO BLS CPI-U INFLATION RATES

The following are quotes form the *Web V* determination on Your Honor's legal reasoning of how you came to use the CPI-U as a "reasonable proxy" for indexing sound recording streams, and based on SoundExchange's economic experts and legal opinion.

GEO agrees with both Your Honors and SoundExchange and respectfully submits that you apply the same legal standard and precedent to *Phonorecords IV* both Subparts B and C, but also *Phonorecords III* Subpart C retroactively.

GEO understands from reading *Web V* that the CRB uses a "reasonable proxy"[30] for a CPI adjustment. The CRB determined from SoundExchange's economic analysis that the CPI-U was the most reasonable proxy and GEO respectfully proposes that Your Honors also choose the CPI-U as the standard for the *Phonorecords III* (remand) and/or *Phonorecords IV*.

"The Judges find a price level adjustment based on changes to the CPI-U to be supported by the testimony of economists who testified on behalf of SoundExchange and the Services. Moreover, the Judges find changes in the CPI-

[30] https://app.crb.gov/document/download/25678 July 22, 2021, [REDACTED] Final Determination of Rates and Terms 2021-2025 (Web V) - Page 300.

U to be a reasonable proxy for measuring changes in price levels in the relevant industries. 357"

"Consequently, the Judges will set statutory rates for the year 2021 and index those rates for inflation over the remainder of the rate term using 2020 as the base year. Specifically, for the years 2022 through 2025, the rates shall be adjusted to reflect any inflation or deflation, as measured by changes in the Consumer Price Index for All Urban Consumers (U.S. City Average, all items) (CPI-U) announced by BLS in November of the immediately preceding year, as described in the regulations set forth in this Determination."

Again, GEO agrees with all of the above and hopes it is applied to the *Phonorecords III* (remand) and/or *Phonorecords IV*.

One quick note — while the following footnote (357) may not apply here, as the CRB noted, under 17 U.S.C. § 805, Congress clearly "instructed" the "Judges to adjust those rates "to reflect nation monetary inflation during the additional period the rates remain in effect"". And while this applies only when "a voluntary settlement must be extended beyond the term of a settlement…", 17 U.S.C. § 805 makes it clear that Congress *intended* for rates to reflect nation monetary inflation.

GEO also agrees with Your Honors "that national inflation rates are a reasonable proxy for price changes in the relevant industries".

"(357) The Judges note that when rates in a voluntary settlement must be extended beyond the term of a settlement to cover the period of a statutory rate term, Congress has instructed the Judges to adjust those rates "to reflect national monetary inflation during the additional period the rates remain in effect." 17 U.S.C. § 805. The Judges view this as support for the proposition that national inflation rates are a reasonable proxy for price changes in the relevant industries."[31]

[31] https://app.crb.gov/document/download/25678 July 22, 2021, [REDACTED] Final Determination of Rates and Terms 2021-2025 (Web V) - Page 300 footnotes 356 and 357.

GEO also completely agrees with Your Honors' *Web IV* finding located in footnote (356) on Page 300 of the *Web V* Determination, whereby streaming rates that are adjusted based on the CPI-U "are clearly preferable to rates that are frozen arbitrarily for the duration of the five-year rate term."

> "(356) If the NAB had presented evidence of some other index that it demonstrated was more closely aligned with price changes in the music services, the Judges could have considered such an index as an alternative to the CPI-U. However, the NAB did not present such evidence, leaving the Judges with a choice between a five-year freeze on the statutory rates or an extension tied to a reasonable index. The Judges find that rates adjusted based on the CPI-U are clearly preferable to rates that are frozen arbitrarily for the duration of the five-year rate term."

GEO agrees and commends the CRJ's for this finding since its true and hopefully now *rate court precedent* to be applied to both *Phonorecords* proceedings.

A CPI-U inflation indexing of musical works is also completely reasonable, especially since *all* American songwriters are under a compulsory license and forced to accept $.00012 cents per-stream, with relatively no sales or downloads (due to the substitution effect), and with no other form of non-performing songwriter income.

GEO also agrees and presumes with Your Honors the following, on Page 299;

> "More critically, the NAB fails to provide persuasive evidence to support its proposal that statutory royalty rates should remain at the same level throughout the rate term for all types of services. That proposal contains an implicit assumption that price levels will remain the same across the music industry over the next five years. That is hardly self-evident. In the absence of persuasive evidence that prices will remain static across the entire music industry for the next…five years, the Judges will not presume that to be the case. The NAB has not presented such persuasive evidence. 356"

Most importantly, GEO prays at the bare minimum Your Honors rule *sua sponte*, or in your Final Determination, that just like in *Web V*, at the very least, a

CPI-U inflation indexing in the *Phonorecords III* (remand) and *Phonorecords IV* is reasonable, necessary, and appropriate.

GEO respectfully requests relief from national monetary inflation in (the *Phonorecords III* (remand)*)* and these *Phonorecords IV* proceedings for Subpart C interactive subscription streaming rates by indexing them to BLS CPI-U inflation for current streaming royalty rates, future rates, and possibly a retroactive CPI-U COLA ("Cost of Living Adjustment") from 2018 to the present — or a COLA from as far back as 2008 from *Phonorecords I,* since the streaming rate has *never* had a COLA adjustment, and it's been almost 15 years, which *is actually lowering the rate.*

While GEO has proposed an inflation increase for the 9.1 cent Subpart B mechanical rate, now called "Subpart B Configurations", GEO has never requested relief from or proposed any Subpart C subscription streaming inflation adjustments or indexing in his WDS until now.

Much of the following government evidence and data is the same as the two *Notices* GEO filed on December 16, 2021 in both proceedings, but it is included here so that it is formally part of this Amended Written Direct Statement proposal.

BUREAU OF LABOR STATISTICS CPI-U AT 6.8% PERCENT (NOW 7.9%)

A BLS press release from December 10, 2021 reads[32]:

> "The Consumer Price Index for All Urban Consumers (CPI-U) increased 0.8 percent in November on a seasonally adjusted basis after rising 0.9 percent in

[32] https://www.bls.gov/news.release/pdf/cpi.pdf December 10, 2021 BLS press release.

October, the U.S. Bureau of Labor Statistics reported today. Over the last 12 months, the all items index increased 6.8 percent before seasonal adjustment."

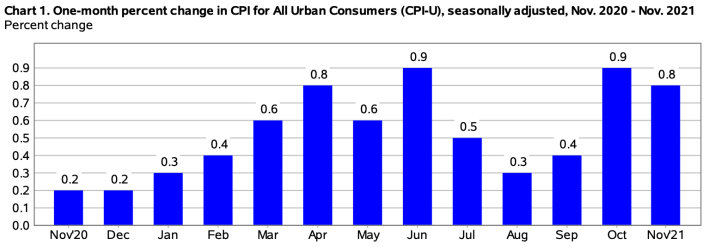
and…

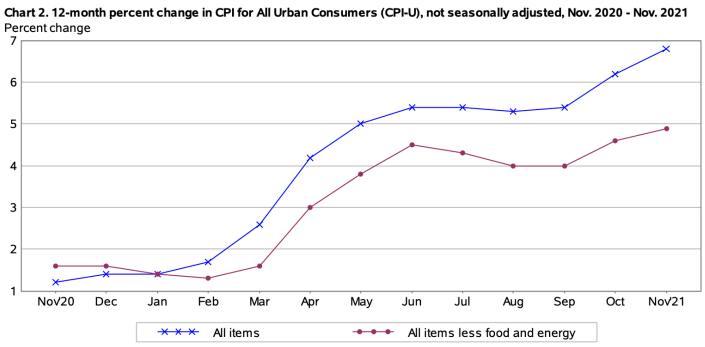
"The all items index rose 6.8 percent for the 12 months ending November, the largest 12-month increase since the period ending June 1982."

On October 13, 2021, GEO proposed a lost inflation adjustment to the frozen 9.1 cent mechanical royalty rate in my Written Direct Statement, but I also proposed a yearly CPI-U indexing to the 9.1 cent mechanical going forward, exactly as this Court determined in the most recent *Web V* rate proceeding[33].

In February of last year, the U.S. inflation rate was between a normal 1% to 2% percent, but now it has been gradually increasing every month to 6.8% percent.

See BLS charts below: (NOTE: This is an older chart and inflation is now at 7.9% percent as of this filing on March 11, 2022.)





[33] https://app.crb.gov/document/download/25678 *Web V* Determination, July 22, 2021. A CPI-U inflation adjustment going forward for the webcasting of §114 digital sound recordings.

GEO also files this Motion to the CRB, using government evidence, to demonstrate that national monetary inflation continues to rise at unprecedented levels, not seen since the 1970's and 1980's, and now at 7.9% percent, and it has been 40 years since we've had a 7.9% inflation rate.

This 7.9% percent inflation rate negatively affects all Americans, but also *all* American songwriters and music publishers subject to the compulsory licenses and microscopic statutory streaming rates under §115 and §385 Subparts B, C and D.

The following are the most recent Cost of Living Adjustments ("COLA") or CPI-U indexing by the CRB which also demonstrates the CRB's willingness to make CPI-U inflation indexing adjustments in other rate proceedings.

GEO also argues that the following CPI-U adjustments are now rate court precedent:

1. the *Web V*[34] Final Determination indexing on October 27, 2021.
2. for Public Broadcasting[35] and SESAC on November 23, 2021.
3. for Satellite Carriers[36] a 6.2% COLA adjustment on November 26, 2021.

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[34] https://www.govinfo.gov/content/pkg/FR-2021-10-27/pdf/2021-20621.pdf *Web V* inflation adjustment by CRB using CPI-U on October 27, 2021.

[35] https://www.govinfo.gov/content/pkg/FR-2021-11-23/pdf/2021-25443.pdf Federal Register, November 23, 2021. Public Broadcasting and SESAC.

[36] https://www.govinfo.gov/content/pkg/FR-2021-11-26/pdf/2021-25719.pdf Federal Register, November 26, 2021. Satellite Carriers 6.2% COLA adjustment

4. the Webcaster Statutory License[37] COLA adjustment on December 1, 2021, indexing royalty rates for the public performance of and for the making of ephemeral reproductions of sound recordings.

We hope that the above mentioned inflation indexing by the CRB is a good sign that Your Honors will also index the *Phonorecords IV* (and possibly *Phonorecords III* (remand)) streaming rates to CPI-U inflation. GEO also prays Your Honors will index the 9.1 cent mechanical rate to CPI-U inflation as well.

Again, GEO respectfully requests relief from national monetary inflation in these *Phonorecords IV* proceedings for Subpart C interactive subscription streaming rates by indexing them to BLS CPI-U inflation for current streaming royalty rates, future rates, and possibly a retroactive CPI-U COLA ("Cost of Living Adjustment") from 2018 to the present — or a COLA from as far back as 2008 from *Phonorecords I,* since the streaming rate has *never* had a COLA adjustment, and it's been almost 15 years.

[37] https://www.govinfo.gov/content/pkg/FR-2021-12-01/pdf/2021-26062.pdf Federal Register, December 1, 2021. Webcaster Statutory License.

PARTICIPANT GEORGE JOHNSON'S STATEMENT ON WHY THE CRB SHOULD FULLY DENY THE FRAUDULENT VOLUNTARY SETTLEMENT AND MEMORANDUM OF UNDERSTANDING ("MOU")

GEO also includes in his AWDS excerpts from his *Fourth Motion to Deny Fraudulent Settlement and Memorandum of Understanding ("MOU"),* filed on November 22, 2021 along with previous motions outlining and describing how NMPA, NSAI, and RIAA used my filings, and a twisting of my words, **to justify the submission their fraudulent motion for voluntary settlement** falsely claiming that;

1.) I was not objecting

2.) not objecting as a participant and

3.) had no plans of submitting a rate proposal that increased the rates, and **they clearly new none of that was true when they wrote it!**

Therefore, their fraudulent voluntary settlement and MOU, which is a quid pro-quo and must be denied for ALL songwriters, for this and several other reasons explained below.

REASONS WHY MOU IS NOT REASONABLE AND MUST BE DENIED

Many of the reasons to deny the fraudulent Settlement are the exact same reasons to deny this MOU between these *same parties negotiating with themselves*.

Namely, this MOU violates the No. 2 *Same Parties* rule under willing buyer, willing seller ("WBWS") which counsel for NMPA, NSAI, and RIAA clearly knew.

On August 10, 2021, the National Music Publishers Association ("NMPA") and Nashville Songwriters Association International ("NSAI"), falsely naming themselves the "Copyright Owners", *on the one hand* and the Recording Industry Association of America ("RIAA") *on the other hand*, submitted a MOU (aka. "MOU 4") attached to their First Round of Comments.

As GEO and other Commenters have pointed out, these 3 record labels and 3 publishing companies are just two hands of the same 3 foreign corporations *negotiating with themselves* in an American rate proceeding, supposedly designed to help American songwriters and music publishers.

This MOU also seems to be a clear *quid pro quo* to once again freeze the 9.1 cent rate in exchange for Late Fee provisions of 18% interest and other substantial financial consideration *only benefiting members of NMPA, and possibly NMPA and employees* — and not all American songwriters and music publishers "subject to" the compulsory license under §115.

There is also an issue of NMPA possibly getting secret "donations" from these major publishers which may amount *to tens of millions of dollars going to NMPA*.

If true, that alone seems incredibly unfair considering this is a public proceeding to set rates for *all* American songwriters and music publishers inside the Copyright Office. This process was not designed to help lobbyists pay their $1.2 million dollar salaries or collect tens of million of dollars in secret side "donations"?

All of these MOU issues seem extremely anti-competitive and a violation of antitrust laws.

These issues are not *irrelevant* like NMPA fraudulently feigns to this Panel.

It seems the schemes and secret deals behind closed doors never ends with these Participants.

To me, they are abusing the CRB rate proceeding process and only full transparency in sunshine will disinfect these secret, self-interested deals, for Big Money, and especially since they are for public compulsory licenses, there should be no secret deals and no money going for bonuses for performance or other reasons.

It's also important to note that this MOU 4 was *formerly secret*, and was only disclosed because of the First Round of Comments by a few songwriters, music attorneys, and our other trade organizations from around the world that spoke up.

They asked Your Honors to act, and you did.

Otherwise, *the MOU would not have been disclosed and remained secret*.

The reason why NMPA, NSAI, and RIAA then submitted this MOU the last day of the Comment period **was so nobody could Comment on it or refute it.**

This is why in the last sentence of their August 10, 2021 Comment, counsel for NMPA, NSAI and RIAA implores the CRB to not only adopt their fraudulent settlement and secret MOU, **but to get it done now**, and before October 13th.

"The Judges should adopt the Settlement, and they should do so *promptly* to streamline this proceeding in anticipation of the deadline for filing written direct statements." (emphasis added)

In other words, NMPA, NSAI, the RIAA and 3FHMRLs want the CRJ's to get this process over with as quickly as possible by "promptly" adopting their scheme.

GEO thanks Your Honors for allowing us to Comment on the MOU and not allow this vitally important issue of the 9.1 cents to be rushed and manipulated by counsel.

GEO respectfully asks Your Honors for relief from this fraudulent voluntary settlement and to fully deny this MOU in addition to all of the previous Motions for Settlement of the Subpart B and "Subpart B Configurations" by NMPA, NSAI, RIAA and the 3FHMRLs.

GEO further asks Your Honors to either either litigate these rates and terms or preferably, simply set the 9.1 rate to 56 cents *sua sponte* since BLS government numbers are stipulated as true and correct as government numbers and inflation numbers are what they are, no more evidence needed.

Furthermore, adjusting for lost inflation using the Consumer Price Index ("CPI-U") and indexed into the future — also as stated above, indexing the Subpart C streaming rate for inflation going forward as well.

I whole-heartedly agree with 99% of the Second Comments and proposals, however GEO is opposed to any *partial adjustment* of the 9.1 cents from 2006 forward, ignoring the lost inflation from 1909 to the present, which would be about 56 cents.

The valid reasons for this are 1.) it's what the rate actually ***is*** when adjusted for CPI inflation and 2.) other than a BUY button, it's the only way inside the CRB system to get **dollars** to songwriters, *instead of no sales and nano-pennies forever*.

If songwriters are opposed to dollars and only want nano-pennies and a 3 cent increase to 12 cents, *that defeats the purpose of the lost inflation increase.*

This is the entire reason I've advocated for the full increase since 1909 and it is a mistake to only ask for 12 cents instead of 56 cents.

The other reason is under WBWS the streaming rate seems to be a benchmark for the 9.1 cents and vice versa. Therefore, if the *Phonorecords III* remand determines that the 44% increase in streaming rates is upheld, then a 44% increase of 56 cents is much better than one at 12 cents.

If one thinks that is too much money for songwriters and they don't deserve a full 89 year lost inflation adjustment to 2021 prices, during a pandemic, while current inflation is currently 7.9% percent and rising, I respectfully disagree.

Dollars not nano-pennies.

Lastly, rates and terms are supposed to be set *de novo*, and they have not because of the flagrant abuse of the voluntary negotiation process by Participants NMPA, NSAI, RIAA and the 3FHMRLs in *4 rate proceedings over 15 years.*

These proceedings are designed to help songwriters, not legally steal the value of their copyrights and property by fraudulent attorneys and $2 million-dollars a year salaried lobbyists who claim to be working for the economic interest of songwriters, but are clearly not. It's pure nonsense what these same lobbyists and attorneys have been able to get away with since 2006 and before. We

songwriters beg Your Honors to please finally put a stop to these legal tricks, and help us songwriters under the new rules of WBWS, the MMA, and *Johnson*.

PARTICIPANT GEO HAS MET STATUTORY REQUIREMENTS

When you look through the record, it's clear I've met all the statutory requirements to deny this settlement, mainly, *properly objecting as a participant,* and well before any settlement. This fact was recognized by NMPA and the Court.

However, NMPA, NSAI and RIAA continue to act like there is no real objection by GEO, no basis for rejection, yet GEO has provided basis after basis in past motions and in the 4th Motion, to reject and deny this trumped up settlement.

In past motions NMPA, NSAI and RIAA have also accused GEO of not providing evidence of why the Settlement is not reasonable, which I also have, yet NMPA, NSAI and RIAA have provided *no evidence* to this Court why their self-serving Settlement to freeze the 9.1 cents is reasonable. They have none.

This is typical of their game playing and gaslighting, demanding I provide evidence to prove their Settlement is *unreasonable*, **yet they offer no evidence to prove that it *is reasonable.***

This type of behavior is harmful to all American songwriters who only want a fair and honest CRB process, not this "chicanery of fraud and deceit"[38] by DC insiders, our own songwriter lobbyists, and their counsel.

[38] One of my attorney father's favorite legal expressions, "a chicanery of fraud and deceit", and this so-called settlement is certainly one of them, along with the MOU.

Add to this NMPA, NSAI and RIAA previously lying to the Court to get their Settlement, and why I call it fraudulent, *since counsel knowingly and falsely claimed that GEO was not planning to object to the 9.1 cent rate*, would not propose an increase, I only wanted a BUY button, and therefore not technically objecting to the Settlement pursuant to 17 U.S.C. § 801(b)(7)(A)(ii).

They still chose to tell the Court all of the above, despite GEO previously filing multiple motions Objecting and stating I was going to Object (and ask for a 9.1 cent increase) **long before NMPA, NSAI and RIAA even filed their Settlement.**

I am still deeply offended by counsels' behavior and these issues were never addressed by this Court, *especially when these Participants lie about you personally* just to force through a fraudulent settlement that hurts *all* American songwriters, which preaching how they are only there to help American songwriters.

This is the most egregious behavior by NMPA, NSAI and RIAA, but to make matters worse, their fraudulent behavior was simply ignored by the CRB and I am still extremely troubled by the reasons why these *Three Motions*[39] were denied without review and for frivolous reasons.

This fraud is at the heart of the problem and ripe for appeal unless the CRB corrects NMPA, NSAI, and RIAA's fraudulent motion for "voluntary settlement".

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[39] https://app.crb.gov/document/download/25468 The link to this "Three Motions" Order is blank for some reason on the eCRB system and I've asked it be corrected. In fact, *almost all of my Orders are blank on my computer on the eCRB system* while all other documents are just fine.

Since Chief Judge Barnett is back, I would respectfully ask the Court to either reconsider the *Three Motions* Order, or simply address it in your future Order regarding the voluntary settlement, that's all I ask to remedy this situation.

The *Three Motions* filed by GEO were dismissed on a small technical error on the eCRB system, by not filing under the right computer category, when the "Motion" category I needed did not exist on the computer system.

In addition, if GEO was filing on paper like the old days, this denial of my *Three Motions* **could have never been taken place**, and the Court would have to have responded to the *specific evidence of fraud* by NMPA, NSAI and RIAA to achieve their settlements — specifically by intentionally lying about this Participant, about my proposals, and about my future actions *which they claimed to this Panel that they can predict*.

The Order also said the *Three Motions* contained no request for relief when I clearly did in at least one of the motions. I respectfully ask Your Honors to revisit GEO's *Three Motions*, especially Judge Barnett since she was not here at the time when these *Three Motions* were filed, and also since she is very familiar with *Phonorecords III* as Chief Judge in the proceeding.

We pray Your Honors will put a stop to this series of fraudulent behaviors by counsel, because *lying about a Participant just to get a settlement* or *negotiating with yourself* is **not what Congress had in mind**.

Now that these issues have been exposed and entered into the record, we pray Your Honors will act in the interests of protecting the value of American copyright creators' work, not the interests of foreign corporations and their 2 million-dollar a year American lobbyists.

MOU IS CLEARLY A QUID PRO QUO WITH 3FHMRL'S IN NMPA'S OWN WORDS

In 2009, NMPA set up a website to direct publishers to the new "MOU 1 NMPA Late Fee Program Group 2" at www.NMPALateFeeSettlment.com which has few paragraphs titled, "What is the NMPA Late Fee Program about?"[40]

Participant NMPA clearly states in their own words that the MOU is "in exchange for waivers of certain late fees thought 2012" and that is an exchange of one consideration for another consideration, or a *quid pro quo*.

> "In exchange for waivers of certain late fees through 2012, the Record Companies had to comply with the provisions of the MOU, including paying participating music publishers and foreign societies their respective publisher share of accrued P&U Royalties."

Apparently, there are more exchanges of consideration or *quid pro quos* that many of the Second Commenters pointed out and explained much better than I, especially music attorney Ms. Gwendolyn Seale at link https://app.crb.gov/document/download/25938 who's Comments I 100% endorse and would join with as a Participant if allowed.

[40] http://nmpalatefeesettlement.com/group_2/faq.php

I hope I can join with Ms. Seale's Comments, as well as music attorney Mr. Chris Castle's Comments, and with songwriters' David Lowery and Blake Morgan's Comments, plus join with songwriter and SGA President Rick Carnes's Comments, and finally join with all the songwriter trade groups who submitted Comment from around the world!

I pray that they are all considered with equal weight, as all other Participants.

Again, I join with all of the First and Second Commenters as a Participant if allowed, with the exception of only a few sentences regarding only adjusting the 9.1 cent from inflation since 2006, and not since 1909 — which is the only way I see, with in the CRB system, to currently pay songwriters a royalty that matters, **in dollars**, under this current rate structure.

I do also want to note all the other serious issues attorneys Ms. Seale, Mr. Castle, and other Commenters raised, ie. — counsel for NMPA, NSAI and RIAA claiming the MOU was "irrelevant" or they basically *forgot to include the MOU* since it wasn't important — which is obviously a lie and a fraud to the Court.

How do you hold a law license and conveniently forget about a couple hundred million-dollar in MOU payments, then have the audacity to claim that is irrelevant to the Settlement?

The MOU is clearly part of the Settlement.

When I add up every fraud and lie told to the Court by the above mentioned lobbyists, it truly paints a picture and begs the question, why lie in the first place about these public issues? It just makes it worse.

But also, ***why fight so hard and for decades to keep the 9.1 frozen*****,** and why spend so much money on attorneys fighting me to raise the 9.1 cents 5 years ago and now?

Why do they even care about fighting a songwriter, like they did me for months in *Phonorecords III* and now *Phonorecords IV*, and then want to spend hundreds of thousands of dollars, if not millions, paying attorneys to keep the rate shuttered, fighting to keep the rate frozen at 9.1 cents every 5 years?

If their excuse is the don't want to spend money on picking a fight they can't win, as NSAI has said, then why spend money on fighting me in 2 separate rate proceedings?

Why not spend the money fighting me on helping me, and helping songwriters raise the 9.1 cent for lost inflation to 56 cents, and **to stop giving away the limited download for free**?

I'm *pro se* and no court is going to rule for me anyway, especially as a non-lawyer, so why not just let me lose and not say a word?

Why would NSAI oppose me at all or even mention my issues, *much less pay lawyers to hurt songwriters*, that NSAI fraudulently claims they advocate for?

Just as Judge Barnett did in the *Phonorecords III* hearings, and on appeal former DC Circuit Judge Merrick Garland, both asked me a similar question.

To paraphrase them both, "George, if the songwriters' situation is so dire why are NSAI and NMPA not advocating for the same issues as you, like raising the 9.1 cents for inflation?"

The answer is **"they both work for the 3 foreign headquartered major record labels who pay their salaries**, not me or American songwriters like they claim." To every songwriters I know 44% of $.00012 cents is about a $.00005 increase, so who care? Nothin from nothing leaves nothing and a 44% percent increase of nothing is insignificant to individual American songwriters and self-publishers.

A 44% increase only currently helps 3 foreign corporations that exploit American copyrights at $.00012 cents per-stream using their complementary oligopoly power.

As I told Judge Barnette that day in the *Phonorecords III* hearing, **the reason I left NSAI as a member is that I realized that NSAI did not advocate for me**, as an independent songwriter and self-publisher, and therefore, I *have no other place to go than be a Participant*, despite what the CRB ruled about GEO in *Phonorecords III*.

> "But, Mr. Johnson has not even hinted at evidence to support his argument that the representative negotiators are engaged in anti-competitive price-fixing at below-market rates. The very definition of a market value is one that is reached by negotiations between a willing buyer and a willing seller, with neither party being under any compulsion to bargain."

First, the CRB never accepted any of my evidence into the record, so that is one reason I had no evidence to support my argument.

One other relevant point here is that **I think I proved that NMPA and NSAI *are* engaged in anti-competitive price-fixing at below market rate by them simply freezing the 9.1 cents, intentionally, over *4 rate proceedings*.**

I think I also proved that that there is no WBWS when NMPA and RIAA are representing the Same Parties — and then fixing the rates at 9.1 cents for 20 years, effectively lowering the rates over time because of inflation, ie. the 9.1 cents from 2006 is only worth around 5.4 cents in 2021.

Finally, as I've told this Court, **I am not a willing seller at zero cents per stream, with no sales, or at 9.1 cents, so I am clearly under compulsion to accept this rate, much less bargain.**

In reality, it's clear that NMPA and NSAI and the 3 Foreign Record Labels **are *intentionally lowering ALL their own songwriter rates*** at Warner Chappell, Universal Publishing and Sony Publishing from 9.1 cents to 5.4 cents, which is below-market to any reasonable person.

This is another dirty little secret that many songwriters at major publishing companies don't realize, and better stand up for their own songs or this practice will continue. **Between the 5.4 cents, freezing rates, no indexing for inflation, no lost inflation adjustment, giving away musical works as "limited downloads", and their controlled composition clause at 75% of the 9.1 cents (or less), their own lobbyists and publishing companies are ripping them off more than they know — finding every possible way to lower their allegedly government guaranteed "minimum statutory rate".**

BEST REASONS TO DENY NMPA, NSAI, & RIAA MOU & SETTLEMENT

The following additional reasons to deny the MOU are:

1. As previously discussed, *there is no willing buyer, willing seller* ("WBWS") since the 3 major record labels like Universal Music Group ("UMG") "on the one hand" allegedly negotiating with Universal Music Publishing ("UMP") "on the other hand" *is a fraud*. This is because the 3 major music publishing companies are under the same corporate umbrella, and therefore negotiating with themselves. This clearly violates the Second rule of the No. 2 *Same Parties*, or *similar* parties rule under WBWS.
2. The *parent corporations* like **Access Industries in Russia** are also *negotiating with themselves* since they own Warner Music Group and Warner Chappell Publishing. **Vivendi in France** owns Universal Music Group and Universal Music Publishing, so this also *clearly violates* the No. 2 *Same Parties*, or *similar* parties rule under WBWS.
3. The fact that UMG and UMP and Vivendi negotiated *every* single *Phonorecords* agreement since 2006 under a false pretense that they are separate parties at arms length, but instead are negotiating with themselves, is a fraud to the court — those alleged "voluntary agreements" **should all be retroactively terminated under fraud and also *not used as benchmarks.***
4. These 3 major record labels and major music publishers are all headquartered, funded and *controlled outside* the United States, and not fully subject to U.S law and jurisdiction. It truly is outrageous that 3 foreign corporations can do this to

their competition, *all* American musical works copyright creators, investors and intellectual property owners.

5. These 3 foreign headquartered major record labels are **setting and freezing** the §115 (and §114) royalty rates *for their American competition* at 9.1 cents and zero cents per stream and it's a clear violation of U.S. antitrust laws. It's almost like criminal racketeering, but I'm not an attorney.
6. Add to the reality that *if* this process of "voluntary agreements" behind closed doors, REDACTED information, confidential Protective Orders, secret "irrelevant" MOU side agreements worth hundreds of millions of dollars, etc. *was not all under the sanction of the U.S. government, Congress, and the Copyright Office*, everyone would be in jail for price-fixing rates, violate anti-trust laws, colluding in secret to fix rate, and racketeering. In other words, all of this would be extremely illegal if this price-fixing was not sanctioned by Congress, yet it *still has the exact same horrible affect on competition and America citizens* whether it's legally sanctioned by the government *or* made illegal by the government. This is why we have rates of zero for *all* American songwriters — legalized price-fixing and anti-competitive behavior promoted by the federal government.
7. The above facts combined — foreign corporations, vertically-integrated corporations, literally negotiating with themselves, in an American administrate law proceeding, to set ALL their American competition at literally zero cents, with no sales, and using our own Copyright Office to take away all our exclusive

rights that were supposed to be protected under Art 1, Sec 8, Clause 8 of the Constitution and §115 of the Copyright Act, is the practical reality these rate proceedings have led us to.

8. All the alleged laws in §385 are openly written by Google, DiMA ("Digital Media Association"), RIAA, Amazon, Spotify, Apple, Pandora, SiriusXM, iHeart Radio, Universal, Warners and Sony and our own lobbyists at NMPA and NSIA — yet none of these attorneys or companies **have been elected, yet they can freely write their own laws to strip away all our sales, mechanical rights, reproduction rights, performance rights, distribution rights, and ephemeral rights.** This is a real problem I hoped the CRB could correct but it will never be corrected because DiMA/Google, *et al*., have written the laws the past 15 years or more and it's a briar patch with no way out for American songwriters. Unelected lawyers rewriting copyright "law" every 5 years to fine tune their business models and stock profits under the guise of a "voluntary negotiations" is like bank robbers rewriting the grand larceny laws with a red line to the judge to keep the robber stealing, legally, of course. This is why I call streaming "legal piracy", because it is, and American music copyright law is now written by foreign governments and Big Tech lawyers.
9. The people who pushed for WBWS in the Music Modernization Act are now the ones abusing it. The very first time it's been used NMPA makes a mockery of it.
10. WBWS was promised as a way to raise rates for songwriters and that is another fraud by NMPA and NSAI, who pushed for WBWS. **Now, all of the Services**

are using WBWS to lower streaming rates *and* based upon the fact that NMPA and NSAI are *intentionally* keeping the 9.1 cents frozen for 4 rate proceedings.

11. I've contacted counsel at NMPA, NSAI and RIAA about their refusal to raise the 9.1 cents despite it now be used as a benchmark against songwriters. They could easily change their agreement and re-file it if they wanted to, but they don't want to. Why not? They know this 9.1 cent freeze in *Phonorecords IV* will also be used as a benchmark in *Phonorecords V* by the Services to lower streaming rates, and that seems unimaginable if I were an attorney who is supposed to be representing songwriters. Counsel tells me they are "offended" by this "mischaracterization" that they are actually working in the interests of the 3 foreign record labels who pay their salaries and not the interests of American songwriters and music publishers.

OTHER REASONS TO DENY NMPA, NSAI & RIAA MOU & SETTLEMENT

In their August 10, 2021 Comments, NMPA, NSAI, RIAA, and the 3FHMRLs, here known as "Joint Record Company Participants", continue their fraud upon this Court as well as their fraud on *all* American songwriter/citizens and independent music publishers.

NMPA and NSAI begin by claiming the have a "significant interest in this proceeding", yet I would argue that they don't.

NMPA and NSAI do not represent American songwriters, only foreign corporations that literally pay their salaries, including Mr. David Israelite's $1.2 to $2 million-dollar yearly salary, but we now learn that NMPA may be paid tens of millions of dollars in "donations" from the MOU to pay for the salaries of their counsel in these proceedings. I'm not a lawyer, but this seems incredible to me that in a public rate-proceeding, this kind of transfer is even allowed.

This is not an *insignificant* fact that *foreign corporations are paying individuals millions of dollars* with an army of American attorneys to do exactly as these 3 foreign corporations (and possibly governments *ie.* Tencent) are demanding.

So, American lobbyists getting paid millions of dollars to help foreign corporations is one additional reason this MOU and Settlement should be denied in its entirety.

And while NMPA and NSAI may try and limit their involvement to just these 3 foreign sister publishing companies they claim to represent, GEO is really speaking of foreign corporations Access Industries in Moscow, Russia, Vivendi in Paris, France, and Sony Corp. in Tokyo, Japan as well as their record label subsidiaries.

So, Access Industries, Vivendi, Sony Corp, and their boards of directors and shareholders, are the ultimate beneficiaries of the Copyright Royalty Board rate setting process to keep their costs fixed and low, especially at zero cents per stream, with frozen royalty rates, no inflation adjustments, no legal liability, and eliminating the sales model for *all*

American songwriters using government force — not to put too fine a point on the facts.

While doing the bidding for foreign corporations, NMPA and NSAI officials, *own no musical works copyrights, have never written a song, and earn no income from their own songwriting or publishing, and therefore have no significant interest as a corporation.*

I understand they claim to represent member board of director publishers, but why do these major publishers not represent themselves since they own the copyrights and make money from them?

The logical answer is NMPA really represents the record labels, and where NMPA's income really comes from, and therefore they go through this charade every 5 years, negotiating with themselves and RIAA, and nobody brings it up or mentions it until I did in *Phonorecords III*, and this fact was ignored. These have never been arms length transactions.

Mr. Israelite is also a former Department of Justice ("DOJ") attorney and the DOJ represent the Copyright Royalty Board in all appeals, so while this may be legal and no big deal, it's just odd, especially when 3 foreign corporations in Russia, France, and Japan are paying for Mr. Israelite's $2 million-dollar yearly salary.

Why isn't the NMPA run by a former American music publishing executive, but instead a DOJ attorney for 17 years?

Is Mr. Israelite's $2 million dollar salary also *a significant interest* as to why NMPA keeps the 9.1 cents *frozen* or refuses to re-submit their voluntary agreement

— now that the Services are using the 9.1 cent freeze by NMPA and NSAI as a benchmark to lower the streaming rate?

I have recently emailed NMPA, NSAI, and the RIAA if they are going to re-do their voluntary agreement to raise the 9.1 cents to *anything,* so that the Services cannot use it as a benchmark to lower streaming rates in this proceeding to 10.5% percent of revenue, and all future proceedings like *Phonorecords IV*.

NMPA counsel absolutely refuses to answer that important question and so the answer is they refuse to increase the 9.1 cents at any costs, even losing on Subpart C streaming rates in this rate proceeding.

It does not make sense and I can only speculate as to the reason, but my intuition says if NMPA will double-cross songwriters on freezing the 9.1 cents to help the foreign record labels who pay that $2 million salary and now "donations" — NMPA will do anything to keep that money and protect their own self-interest.

NMPA and NSAI also fraudulently call themselves the "Copyright Owners" which has bothered me for a long time since Mr. Israelite, the NMPA organization nor executives, nor the NSAI organization, own no §115 copyrights nor make any money off of musical works?

So, technically that is *not* a significant interest, but I understand they claim to represent copyright owners. The reason the term "Copyright Owners" is a fraud is it implies to the Court they they *own copyrights*, are themselves copyright creators, and that they speak for *all* copyright owners, which NMPA and NSAI have both fraudulently claimed in the past as the CRB well knows. None of that is true.

Now they have suddenly switched from claiming they represent *all* songwriters, to now detailing who they represent, but still lie about that, now claiming they represent self-publishers and independent songwriters — which is nonsense, **since why freeze our rates if they represented us**?

NMPA and NSAI are now claiming to represent "300 music publishers and their songwriting partners".

So why the change from representing *all* to just 300?

NMPA and NSAI then admits to representing these 3 foreign corporations, which have *all* the marketshare and therefore all the power in these proceedings, not individual American citizen songwriters who have *no rights* in CRB rate proceedings.

This is odd and very troubling as an American citizen and songwriter.

I realize this is all "legal", but it's still unsavory, unconstitutional and has destroyed the songwriter livelihood and sales model that lasted 100 years.

NMPA claiming their lobbying firm "protects and advances the interest of over 300 music publishers and their songwriting partners in matters relating to the domestic and global protection of music copyrights," is also another fraud since if NMPA were protecting and advancing the interests of American publishers and songwriters, *they would not be intentionally freezing rates at 9.1 cents for 16 years*, claiming it's too much work and we lost already, so why try again.

If NMPA were representing American songwriters and really "protecting and advancing" our "interests" they would be fighting to increase the 9.1 cent rate

instead of spending hundreds of thousands of dollars on counsel to *fight against* any rate increase in the 9.1 cents in *Phonorecords III* and *IV*, or working to get rid songwriters of all sales.

In their Comments, NSAI and their counsel claim that "NSAI advocates for the legal and economic interests of songwriters, who derive income from the licensing of their copyrighted works," yet this is another fraud. NSAI is fighting a songwriter who wants to raise rates *in my own economic interest*, so this is not true. NSAI is also fighting a songwriter who wants to eliminate the free limited download that does not pay songwriters the 9.1 cents they are owed for their own copyright.

For NSAI and NMPA to now act like they are really representing someone like GEO who independently writes and self-publishes, by now claiming "membership includes songwriters who directly publish and license their own music," **is another fraud since they are the ones fighting raising the 9.1 cents**, **they have frozen it intentionally for so long**, and then **love giving away limited downloads for free with no payment to songwriters**.

So, what NSAI and NMPA are falsely saying is, disregard GEO and his rate proposals, we are really speaking for him too, which is of course, absolutely not true.

And as I have testified to during the hearings in *Phonorecords III*, *I would not be in these rate proceedings if NSAI or NMPA represented "songwriters who directly publish and license their own music."* Period.

The evidence is clearly demonstrated by NSAI and NMPA's **4th intentional freeze of the 9.1 cent mechanical.**

And as Your Honors are well aware from the First Round of Comments in this proceeding by actual songwriters who directly publish and license their own music, who *depend* on the 9.1 cents, while NMPA and NSAI have literally spent at least hundreds of thousands of dollars in attorney fees with Mr. Semel and their counsel fighting my efforts to raise the 9.1 cents for simple inflation in both *Phonorecords III* and now *Phonorecords IV*.

As I have written before, why would NMPA and NSAI spend so much money paying counsel to STOP the raising of the 9.1 cents in 2 separate rate proceedings if they actually advocated for the "economic interests" of songwriters, which they have fraudulently claimed to this Court?

Any *reasonable person* can figure out, based upon that simple evidence, that some type of fraud is going on in general with NMPA and NSAI.

Why are these "songwriter advocates" **so obsessed with keeping songwriters frozen at 9.1 cents**, and at zero cents per-stream, with no sales, unless they were *not* advocating for songwriters, but another Participant(s)?

The obvious answers are they are advocating for themselves *and* the 3 foreign corporations who pay their $2 million dollar salaries to keep *all* American songwriters, their songwriting competition, frozen, and to keep record label costs down and shareholder interests rising.

So, NSAI claims to be helping the economic interests of all American songwriters, but in reality, are only setting *all* American songwriters at zero cents

per stream, with no sales, no practical increase in rates, no competition for foreign records labels, and no liability for the Services.

NMPA and NSAI are advocating for themselves, their own personal self interests *ie.* $2 million dollars per year going directly to Mr. David Israelite's salary.

That is a lot of money going to *one person* who is in charge of freezing rates for *all* American songwriters at 9.1 cents and keeping the streaming rate-structure at $.00012 cents per-stream for songwriters.

GEO respectfully asks the CRB for relief from this MOU and voluntary settlement, and therefore, to deny this settlement and the MOU, then either adjust the rate for lost inflation, *sua sponte* if allowed, or litigate this inflation increase and the MOU in the sunshine with full transparency to the public.

C. INDEX OF WITNESS STATEMENTS

Expert Witnesses

Pursuant to Federal Rules of Evidence 702, GEO intends to offer himself as his own expert witness and fact witness to supply evidence of the business and economic basis of his rate proposals.

In *Phonorecords III*, the CRB declared GEO an expert witness in songwriting. GEO was also declared an expert in SDARS III in additional areas.

GEO's contact information is available throughout this WDS if needed.

Tab	Witness or Expert	Title
1	George Johnson, expert in songwriting by CRB.	Singer-Songwriter-Publisher, §115 and §114 Copyright Creator, Author, d/b/a George Johnson Music Publishing (formerly BMI) for 25 years in Nashville plus Geo Music Group

Fact Witnesses

Tab	Witness or Expert	Title
1	George Johnson	Singer-Songwriter-Publisher, §115 and §114 Copyright Creator, Author, d/b/a George Johnson Music Publishing (formerly BMI) for 25 years in Nashville plus Geo Music Group

D. INDEX OF GEO'S EXHIBITS FOR *PHONORECORDS IV*

All evidence is public and sponsored by George Johnson.

Exhibit No.	Description
GEO 1	mechanical-license-royalty-rates-1.png
GEO 2	mechanical-license-royalty-rates-2.png
GEO 3	83 years of frozen mechanicals evidence on copyright website.pdf
GEO 4	Frozen Mechanicals – Music Tech Solutions.pdf
GEO 5	GEO Ex. 023 - GEO2853 - Chart 4-InflationChart.jpg
GEO 6	GEO Ex. 005 - GEO2885 - RIAA 2015 Inflation-02.jpg
GEO 7	GEO Ex. 006 - GEO2886 - RIAA 2015 Inflation-03.jpg
GEO 8	GEO Ex. 007 - GEO2887 - RIAA 2015Inflation-04.jpg
GEO 9	GEO Ex. 017 - music-industry-1.jpg
GEO 10	GEO Ex. 015 - The REAL Death Of The Music Industry - Business Insider.pdf
GEO 11	GEO Ex. 016 - music-industry.jpg
GEO 12	GEO Ex. 019 - music-industry-3.jpg
GEO 13	GEO Ex. 113 - RIAA newest number March, 24, 2016 New York Times "In Shift to Streaming, Music Business Has Lost Billions".png
GEO 14	GEO Ex. 018 - music-industry-2.jpg
GEO 15	Gas Prices October 11, 2021 3.27 per gallon AAA.png
GEO 16	2021-07-30 July Core inflation reaches 3.5% highest since 1991.png
GEO 17	Music Industry Chart 1 2021 Inflation 5.3 daily mail on BLS mainstream.jpg article
GEO 18	now 5.4 inflation September daily mail world bank BLS.jpg
GEO 19	2020 to 2021 US Inflation Rate BLS.png
GEO 20	2021-10-13 September inflation 2021 BLS data.jpg

Exhibit No.	Description
GEO 21	2021-10-13 Twitter Washington Post Inflation was up 5.4 percent over last year in sept the highest rate in 13 years.png
GEO 22	BLS Inflation Calculator 1913 to to 2021 from 2 cents to 56 cents.png
GEO 23	2021 BLS Inflation Calculator from 1913 to 2021 from 2 cents to 56 cents zoom.png
GEO 24	GEO Ex. 119 - Frozen Mechanicals/ A Brief History | The Trichordist.pdf
GEO 25	What if Inflation Is Here to Stay? - WSJ.pdf
GEO 26	Higher Inflation Is Here to Stay for Years, Economists Forecast - WSJ.pdf
GEO 27	Inflation, Supply-Chain Disruptions, Dysfunction In Washington And A New Workers' Mindset Contributed To A Disappointing September Jobs Report.pdf
GEO 28	Chart 9-A_to_B_to_CUS inflation/ Wholesale prices soar 7.8% in the biggest surge on record | Daily Mail Online copy.pdf_Direct_License_2car.jpg
GEO 29	Supply chain crunch and rising cost of crude oil could put US on collision course with inflation | Daily Mail Online.pdf
GEO 30	Home heating sticker shock/ The cost of natural gas is up 180% - CNN.pdf
GEO 31	Natural Gas Soars Most Since Last Winter on U.S. Scarcity Fears - Bloomberg.pdf
GEO 32	GEO Ex. 110 - GEO2901- (QUOTE ONLY) Roger Waters Slams Silicon Valley "Rogues and Thieves" Rolling Stone.pdf
GEO 33	NMPA David Israelite yearly salary of $1,282,500 Screen Shot 2021-10-10 at 2.11.49 PM.png
GEO 34	Hipgnosis founder Merck Mercuriadis's message to the majors | Publishing | Music Week.pdf

Exhibit No.	Description
GEO 35	Artist Fundraising Pick from Spotify Tip Jar 1280-x-720-_Blog_.gif
GEO 36	U.K. Parliament Slams Music Labels, Backs Artists in Streaming Dispute - Variety.pdf
GEO 37	GEO Ex. 003 - SX Ex. 003 RIAA 2015 Shipment and Revenue.pdf
GEO 38	GEO Ex. 032 - GEO2862 - Chart 13-LRB_Act.jpg
GEO 39	GEO Ex. 033 - GEO2863 - Chart 14-LRB_Act_ATLA_Lobbyists.jpg
GEO 40	2021 Web V Determination CRB (dragged).pdf
GEO 41	2021-07-13 Congressman LD of Texas letter to CRB protesting frozen mechanicals.pdf
GEO 42	George Harrison's 'All Things' is No. 1 on Top Rock Albums | Billboard copy.pdf
GEO 43	2021-09-20 Signed Fearless Taylors Version CDs available now.pdf
GEO 44	Taylor RED Vinyl pre-sales.jpeg
GEO 45	Taylor RED Vinyl sales.jpeg
GEO 46	Billy Joel 210826_vinylboxvol1.jpg
GEO 47	2021-09-15 Billy Joel Vinyl Album New Release The Vinyl Collection Volume 1 Learn more about this exciting release inside.pdf
GEO 48	Led Zeppelin iTunes Apple.png
GEO 49	jim-anderson-meme Spotify “The problem was to distribute music. Not to give you money, okay?".jpg
GEO 50	19-1028 Joint Appendix Public Appendix - Joint Appendix 19-1028 A616 through 650 2006 Phonorecords I agreement.pdf
GEO 51	GEO’s 9.1 cents to 56 cents inflation adjustment plus CPI over 10 years
NOTE:	Old Exhibit numbers are from *PIII*, *SDARSIII* or *Web IV*.

By: *__/s/ George D. Johnson__*

George D. Johnson, Pro Se
an individual songwriter and publisher
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Telephone: (615) 242-9999

George D. Johnson (GEO), an individual songwriter and music publisher d.b.a. George Johnson Music Publishing (GJMP) (formerly BMI)

Friday, March 11, 2022

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In re Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)	Docket No. 21-CRB-0001-PR (2023–2027)

E. DECLARATION OF GEORGE D. JOHNON (GEO) REGARDING WRITTEN DIRECT STATEMENT AND TESTIMONY

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 550.4(e)(1), I declare under penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Respectfully submitted,

By: */s/ George D. Johnson*

George D. Johnson, Pro Se
an individual songwriter and publisher
d.b.a. George Johnson Music Publishing
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George D. Johnson (GEO), an individual songwriter and music publisher d.b.a. George Johnson Music Publishing (GJMP) (formerly BMI)

Friday, March 11, 2022

F. CERTIFICATION OF SERVICE

I, George D. Johnson, ("GEO") an individual Appellant songwriter, music publisher and Participant, hereby certifies that a copy of the foregoing George Johnson's (GEO) Amended Written Direct Statement for *Phonorecords IV* has been served this 11th day of March, 2022 by the eCRB electronic system to the CRB, all Participants and/or Counsel.

Friday, March 11, 2022 By: */s/ George D. Johnson*

George D. Johnson, Pro Se
an individual songwriter and publisher
d.b.a. George Johnson Music Publishing
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Nashville, TN 37202
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Telephone: (615) 242-9999

George D. Johnson (GEO), an individual songwriter and music publisher d.b.a. George Johnson Music Publishing (GJMP) (formerly BMI)

Proof of Delivery

I hereby certify that on Friday, March 11, 2022, I provided a true and correct copy of the GEORGE JOHNSON'S (GEO) AMENDED WRITTEN DIRECT STATEMENT no Testimony to the following:

Apple Inc., represented by Mary C Mazzello, served via ESERVICE at mary.mazzello@kirkland.com

Google LLC, represented by Gary R Greenstein, served via ESERVICE at ggreenstein@wsgr.com

Joint Record Company Participants, represented by Susan Chertkof, served via ESERVICE at susan.chertkof@riaa.com

Copyright Owners, represented by Benjamin K Semel, served via ESERVICE at Bsemel@pryorcashman.com

Spotify USA Inc., represented by Joseph Wetzel, served via ESERVICE at joe.wetzel@lw.com

Powell, David, represented by David Powell, served via ESERVICE at davidpowell008@yahoo.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via ESERVICE at benjamin.marks@weil.com

Amazon.com Services LLC, represented by Joshua D Branson, served via ESERVICE at jbranson@kellogghansen.com

Zisk, Brian, represented by Brian Zisk, served via ESERVICE at brianzisk@gmail.com

Signed: /s/ George D Johnson